

## REMARKS

Amendments to the claims have been made to respond to the issues and concerns raised in the Office Action, to clarify aspects in the specification and claims, and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments also have been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively affecting the scope of protection provided by the disclosure and claims of the present application, and also in a manner that avoids prosecution history estoppel, limitation of the scope of equivalences, or the like. Any amendment should not be construed as an admission regarding the propriety of any objection or rejection raised in any Office Action, and the Applicant reserves the right to pursue the full scope of the unamended claims in any subsequent patent application as may be appropriate.

Claims 124, 133, 136, and 139-141 have been amended. Claims 1-123, 125-132, 134-135, 137-138, and 142-143 have been cancelled. Claims 124, 133, 136, and 139-141 remain in the application. Each amendment is believed to have been made in accordance with Rule 121. However, should any unintended informality exist, it is requested that the undersigned be contacted by telephone so that it may be resolved as expediently as possible. It is believed the amendments fully respond to the issues raised in the Office Action. Further detail with respect to specific points raised in the Office Action is offered below.

The Office has objected to claim 124. The Applicant has added the word “and” as suggested.

The Office has objected to the specification. The Applicant believes the amendments to the claims render these objections moot.

The Office has rejected the claims as having new matter. While the Applicant disagrees that the claims raise any new matter issues, the amendments to the claims are

believed to accommodate the Office's concern. Support for the recitation of "sorting... in the range of 92 to 800 live sperm per second" may be found in the specification at least at page 23, lines 1-2; page 25, lines 10-13; and page 27, lines 2-3. Support for the recitation of "concentrating... to a concentration in the range of  $1.6 \times 10^6$  to  $5 \times 10^6$  sperm per milliliter" may be found in the specification at least at page 21, lines 3-5, 16, and 22-23; page 23, lines 2-4; page 25, lines 13-15; and page 27, lines 3-4. Support for the recitation of "establishing an insemination sample having in the range of  $1 \times 10^5$  to  $2 \times 10^6$  sperm cells" may be found in the specification at least at page 19, lines 1-22. The Applicant believes any remaining new matter issues are rendered moot by the amendments to the claims.

The Office raises a double patenting concern. Please find filed with this response a terminal disclaimer, which is believed to resolve the double patenting concern.

## CONCLUSION

The Applicant, having addressed each of the concerns raised in the Office Action, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. Allowance of claims 124, 133, 136, and 139-141 is respectfully requested.

Dated this 27<sup>th</sup> day of May, 2009.

Respectfully submitted,  
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